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Honorable Karen A. Overstreet
Chapter 11
Hearing Location: Seattle, Room 7206

Bid Procedures Hearing

Hearing Date: Friday, October 8, 2010

Hearing Time: 9:30 a.m.

Response Date: Wednesday, October 6, 2010, or such other time as the Court may set pursuant to an order shortening-time for hearing on the bid procedures motion.

Sale Hearing

Hearing Date: Friday, November 5, 2010

Hearing Time: 9:30 a.m.

Response Date: Friday, October 29, 2010

10 UNITED STATES BANKRUPTCY COURT
11 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

12 In re:

13 COAST CRANE COMPANY,

14 Debtor.
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Case No. 10-21229

MOTION FOR ORDER, INTER ALIA,
(i) SCHEDULING A HEARING TO APPROVE
ASSET PURCHASE AGREEMENT WITH
COAST RAINIER ACQUISITION COMPANY
FOR SALE OF DEBTOR'S ASSETS, FREE
AND CLEAR OF LIENS; (ii) APPROVING
THE FORM AND MANNER OF NOTICE; (iii)
APPROVING EXPENSE REIMBURSEMENT
AND BREAK-UP FEE; (iv) APPROVING
BIDDING PROCEDURES; AND (v)
APPROVING PROCEDURES FOR
ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS

– and –

MOTION FOR ORDER APPROVING THE
SALE OF SUBSTANTIALLY ALL OF THE
DEBTOR'S ASSETS AND BUSINESS FREE
AND CLEAR OF ALL LIENS, CLAIMS,
INTERESTS AND ENCUMBRANCES;
APPROVING THE ASSUMPTION AND
ASSIGNMENT BY THE DEBTOR TO BUYER
OF CERTAIN OF THE DEBTOR'S
EXECUTORY CONTRACTS; AND
GRANTING OTHER RELIEF

MOTION FOR ORDER, (i) SCHEDULING A HEARING TO
APPROVE ASSET PURCHASE AGREEMENT WITH COAST RAINIER
ACQUISITION COMPANY, etc., -and- MOTION FOR ORDER APPROVING SALE, etc. - 1

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1 Coast Crane Company (the "Debtor" or "Coast") moves (the "Motions") the Court
2 pursuant to Bankruptcy Code Bankruptcy Code Sections 105(a), 363(b), (f), (m), and (n), and 365
3 and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 for an order (i) scheduling a hearing to approve
4 an asset purchase agreement with Coast Rainier Acquisition Company or its assigns (collectively,
5 "CRAC" or "Buyer") for the sale of Debtor's assets, free and clear of liens; (ii) approving the form
6 and manner of notice; (iii) approving expense reimbursement and break-up fee; (iv) approving
7 bidding procedures; and (v) approving procedures for assumption and assignment of executory
8 contracts (the "Bidding Procedures Order"). In addition, the Debtor moves for an order (the "Sale
9 Order" and the hearing thereon, the "Sale Hearing") authorizing the sale (the "Asset Sale" or
10 "Sale") of substantially all of the Debtor's assets and business (the "Purchased Assets") more
11 particularly identified in the Asset Purchase Agreement (the "Purchase Agreement") dated
12 September 21, 2010, free and clear of all liens, claims, and encumbrances to either: (1) CRAC, or
13 (2) an Alternative Bidder (defined below). In connection with the proposed sale, along with notice
14 of the hearing on this Motion, the Debtor is providing notice of overbid/auction procedures, for
15 which the Debtor is also seeking Court approval. The Debtor also seeks Court approval of the
16 assumption and assignment of certain executory contracts and leases (the "Assumed Executory
17 Contracts and Leases"), which will be transferred to the successful bidder at the auction.

18 The Debtor also requests that this Court find that (i) notice of these Motions was appropriate
19 and was properly served in accordance with applicable Bankruptcy Code provisions, the Bankruptcy
20 Rules, and orders of this Court; (ii) the proposed sale of the Purchased Assets is in the best interests
21 of the Debtor and its estate and creditors; (iii) the sale of the Purchased Assets is being proposed
22 and, if approved, will be consummated as provided in Bankruptcy Code Section 363(m); and (iv) the
23 Buyer or the Alternative Bidder, if any, is not an insider or an affiliate of the Debtor.

24 These Motions are based on these moving papers, the Memorandum in Support of the
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1 Motions, the Declaration of Tom Neary (the "Neary Decl."), the record in this case, the arguments
2 and representations of counsel, and any oral or other documentary evidence presented at or prior to
3 the hearing on these Motions. Unless otherwise defined, capitalized terms used herein shall have the
4 meanings ascribed to them in the Purchase Agreement.

5 **A. The Auction, Break-Up Fee and Overbid Procedures**

6 1. The sale is subject to overbidding on procedures negotiated with CRAC and the
7 Debtor's Senior Lenders¹ (the "Senior Lenders") subject to Court approval. The procedures for
8 overbids and an auction are set forth in the requested Bid Procedure Order as follows:

9 a. Any alternative bidder (each, an "Alternative Bidder" and its bid, and
10 "Alternative Bid") interested in purchasing the Purchased Assets must submit to the Debtor
11 an Alternative Bid in conformity with the following procedures by no later than **12:00 p.m.**
12 **PDT on Monday, October 25, 2010** (the "Alternative Bid Deadline"). Each Alternative Bid
13 must satisfy the following requirements in order to be considered by the Debtor (a "Qualified
14 Alternative Bid"):

15 be in writing and served on the following: (i) Debtor's counsel, K&L Gates,
16 LLP, 925 Fourth Avenue, Suite 2900, Seattle, WA 98104-1158, Attn: Michael
17 J. Gearin and Eric Simonson, Tel: (206) 623-7580, Fax: (206) 370-6012;
18 (ii) the Debtor, attn: Dan Goodale, 18250 5th Ave. South, Seattle, WA 98108,
19 Fax: (206) 628-6651; (iii) PNC Business Credit, 2 North Lake Ave., Suite
20 440, Pasadena, CA 91101, Attn: Mark Tito, Fax: (626) 432-4589; (iv) PNC
21 Business Credit's Counsel, Levy, Small & Lallas, 815 Moraga Drive, Los
22 Angeles, CA 90049, Attn: Leo Plotkin, Fax: (310) 471-7990; (v) CRAC's
23 Counsel, Milbank, Tweed, Hadley & McCloy LLP, attn: Melainie Mansfield,
24 David Zolkin, and Greg Bray, 601 South Figueroa Street, 30th Floor, Los
25 Angeles, CA 90017, Fax (213) 892-4000; (vi) CRAC's Local Counsel,
26 Graham & Dunn, PC, Pier 70, 2801 Alaskan Way Ste 300, Seattle, WA
98121, Fax (206) 340-9599; (vii) CRAC, attn: Jose E. Feliciano, 233 Wilshire
Blvd., Suite 800, Santa Monica, CA 90401, Fax: (310) 400-8801; and (viii)
Senior Lender's Local Counsel, Davis Wright Tremaine, LLP, 201 Third Ave.,
Suite 2200, Seattle, WA 98101. Debtor shall immediately distribute a copy
of each such Alternative Bid received to counsel for any Official Committee,

¹ PNC Bank National Association, Colonial Pacific Leasing Corporation, and Wells Fargo National Association

1 if any;

- 2 i. identify the proponent of the Alternative Bid and an individual who is
3 authorized to appear and act on behalf of the party submitting such Alternative
4 Bid (an "Alternative Bidder");
- 5 ii. be a firm, unconditional bid to purchase the Purchased Assets, not subject to
6 any contingencies as to the validity, effectiveness and/or binding nature of the
7 offer, including, without limitation, the conduct of further due diligence
8 review, obtaining financing or receipt of a consent of Manitowoc Crane Group
9 to the assumption and assignment of the Manitowoc Agreement (as defined in
10 the Purchase Agreement);
- 11 iii. be a firm bid, which is in an amount that is equal to or greater than the value
12 of the Total Purchase Price² (including a cash portion of such bid of not less
13 than Thirty-One Million Two Hundred Sixty Thousand dollars
14 (\$31,260,000)³, plus additional cash consideration of not less than Five
15 Hundred Thousand Dollars (\$500,000);
- 16 iv. be accompanied by sufficient information to demonstrate that the competing
17 bidder has the financial wherewithal and ability to timely consummate the
18 acquisition of the Purchased Assets on terms and conditions substantially the
19 same as this Agreement, including evidence of adequate financing and a
20 financial guaranty, if appropriate;
- 21 v. be accompanied by a signed contract substantially in the form of the Purchase
22 Agreement, and marked to show any changes made to the Purchase
23 Agreement;
- 24 vi. be accompanied by a good-faith cash deposit in an amount equal to at least
25 Seven Million Five Hundred Thousand (\$7,500,000), to be deposited with
26 Debtor on or before the Alternative Bid Deadline.
- vii. be open and irrevocable through the conclusion of the Sale Hearing, unless
extended by agreement of the parties;
- viii. not contain contingencies greater or conditions to Closing otherwise more
restrictive than, or in addition to, what is contained in the Purchase
Agreement, after giving effect to any amendments or waivers of such
conditions or contingencies which occur prior to entry of the Bid Procedures
Order.

² as defined in Section 1.1 of the Purchase Agreement executed by CRAC (the "Total Purchase Price").

³ Hereafter referenced as the "Cash Portion."

1 b. The Debtor will evaluate all bids to determine whether or not they are
2 Qualified Bids and promptly inform CRAC of all Qualified Bids and any information
3 received related to the terms and conditions of such Qualified Bids.

4 c. If no Qualified Alternative Bid is submitted for the Purchased Assets, then the
5 Debtor will request at the hearing that the Court approve the proposed sale of the Purchased
6 Assets to CRAC pursuant to the Purchase Agreement.

7 d. If one or more Qualified Alternative Bids are submitted for the Purchased
8 Assets (each bidder or group of bidders who have submitted such a timely conforming
9 Qualified Alternative Bid, together with CRAC, shall be referred to herein as a "Qualified
10 Bidder"), then:

- 11 1) the Debtor will conduct an auction (the "Auction") to consider
12 overbids for the Purchased Assets on **Wednesday, November 3, 2010**,
13 at **11:00 a.m. PDT** at the offices of K&L Gates, LLP, 925 Fourth Ave,
14 Suite 2900, Seattle, WA 98104; and
- 15 2) CRAC shall have the opportunity to increase its offer to a level at
16 least One-Hundred Thousand Dollars (\$100,000) in excess of the
17 highest Qualified Alternative Bid to be eligible to become the starting
18 bid at the Auction (a "CRAC Increased Bid"), provided, however, that
19 any such increase by CRAC shall be in cash, and provided further that
20 CRAC shall be entitled to credit bid its Break-Up Fee and the Pre-
21 Auction Expense Reimbursement Amount⁴ against the
22 purchase price reflected in such Qualified Alternative Bid; and

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24 ⁴ The Bidding Procedures Order provides that one Business Day in advance of the Auction, Buyer
25 shall file a pleading with the Bankruptcy Court estimating the amount of the fees and costs incurred
26 through such date (i) for which it would seek reimbursement as part of the Expense Reimbursement
 in the event that it is not the successful bidder at Auction and (ii) that will constitute the portion of its
 bid that may be credited at Auction on account of the Expense Reimbursement (the "Pre-Auction

1 3) Subject to paragraph 1(d)(2) above, Debtor shall evaluate all Qualified
2 Bids received and shall determine, with the agreement of the Senior
3 Lenders (unless the amount of the Qualified Bid is in excess of the
4 amount necessary to satisfy the obligations owed to the Senior
5 Lenders in full, in which case, in consultation with the Senior
6 Lenders), which Qualified Bid reflects the highest and best offer as the
7 Starting Auction Bid for the Purchased Assets. Debtor shall announce
8 its determination of the Starting Auction Bid at the commencement of
9 the Auction;

10 e. All bidders shall be deemed to have consented to the core jurisdiction of the
11 Court and to have waived any right to jury trial in connection with any disputes relating to
12 the Auction and/or the sale of the Purchased Assets. All Qualified Bidders shall be bound
13 by their bids until the earlier of (i) such time as a definitive sale agreement (acceptable to the
14 Debtor in its sole discretion) is executed by the prevailing bidder and the Court has entered
15 an order approving the sale to such prevailing bidder, or (ii) November 22, 2010.

16 f. Only Debtor, any representative of any Official Committee(s), representatives
17 of the Senior Lenders, and Qualified Bidders (and their respective professionals) shall be
18 entitled to attend the Auction, and only Qualified Bidders shall be entitled to make any
19 additional bids ("Subsequent Bids") at the Auction.

20 g. All Qualified Bidders shall be entitled to be present for all bidding with the
21 understanding that the true identity of each Qualified Bidder shall be fully disclosed to all
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24 Expense Reimbursement Amount"); provided, however, that such estimation of the Pre-Auction
25 Expense Reimbursement Amount shall in no way prejudice Buyer's entitlement to the full amount of
26 the Expense Reimbursement or the Break-Up Fee in the event that Buyer is not the successful bidder
 at Auction, and (ii) its good faith estimate of the amount of fees and costs that it will incur thereafter
 for which it would expect to seek reimbursement as part of the Expense Reimbursement.

1 other persons present at the Auction and that all material terms of each bid will be fully
2 disclosed to all other persons present at the Auction throughout the entire Auction.

3 h. At least one Business Day prior to the Auction, Debtor will give all Qualified
4 Bidders and all other persons entitled to attend the Auction a copy of the highest and best
5 Qualified Alternative Bid received and copies of all other Qualified Alternative Bids. In
6 addition, Debtor will inform each Qualified Bidder and each other person entitled to attend
7 the Auction of the identity of all Qualified Bidders that may participate in the Auction.
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9 i. Prior to the start of the auction, Debtor may announce at the Auction
10 additional procedural rules that it determines to be reasonable under the circumstances (e.g.,
11 the amount of time allotted to make subsequent bids) for conducting the Auction, so long as
12 such rules are not inconsistent with these Bidding Procedures.

13 j. At the Auction, bidding shall begin with the amount of the highest Qualified
14 Alternative Bid or CRAC Increased Bid, if applicable (the "Opening Bid"). The first
15 incremental competitive bid at the Auction shall be at least One-Hundred Thousand Dollars
16 (\$100,000) over the Opening Bid, and bidding shall continue in minimum increments of
17 at least One-Hundred Thousand Dollars (\$100,000) higher than the previous bid. The order
18 of bidding shall begin with the lowest Qualified Alternative Bid and shall continue in
19 ascending order of each Qualified Alternative Bid, with CRAC being the last party to submit
20 a subsequent bid in the initial round of bidding. Any bid by CRAC shall be subject to a
21 credit in the amount of the Break-Up Fee and the Pre-Auction Expense Reimbursement
22 Amount; provided that CRAC shall remain entitled to recover the Break-Up Fee and Expense
23 Reimbursement in the event it is not the successful bidder at the Auction.
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1 k. To the extent that Debtor receives a Qualified Alternative Bid that does not
2 include the ABL Earn-Out component as defined in Section 1.1 of the Purchase Agreement,
3 then CRAC shall have the opportunity to increase the Total Purchase Price to a level in
4 excess of such Qualified Alternative Bid by (A) eliminating the ABL Earn-Out component,
5 and (B) increasing the Cash Portion of the Total Purchase Price.
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7 l. To the extent that CRAC's bid set forth in the Purchase Agreement is not the
8 Opening Bid, and subject to compliance with the Bid Procedures Order, CRAC shall be
9 entitled to fully modify the terms and components of its bid to compete with the terms of any
10 other competitive Qualified Bid.

11 m. No bids shall be considered by the Debtor unless a party submitted a Qualified
12 Bid and participates in the Auction.

13 n No bids shall be considered by the Debtor unless such bid shall provided that
14 the assets to be purchased thereunder consist of all or substantially all of Seller's assets.
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16 o. The Auction shall continue in one or more rounds of bidding and shall
17 conclude after each participating Qualified Bidder has had the opportunity to submit an
18 additional subsequent bid with full knowledge of the then-existing highest bid. Any
19 Qualified Bidder electing not to submit a Subsequent Bid when it is such party's turn to do so
20 will be deemed to have irrevocably withdrawn from the Auction.

21 p. If Seller, with the agreement of the Senior Lenders (unless the amount of the
22 Qualified Bid is in excess of the amount necessary to satisfy the obligations owed to the
23 Senior Lenders in full, in which case, in consultation with the Senior Lenders), determines
24 the winning bid and either CRAC or a Qualified Bidder believes that its bid was in a higher
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1 amount than the bid selected as the winning bid, the Bankruptcy Court shall determine which
2 is the successful bidder.

3 q. When determining the winning bid, Debtor shall include the Break-Up Fee (to
4 the extent allowed by the Bankruptcy Court) and the Pre-Auction Expense Reimbursement
5 Amount in CRAC's last bid.

6 r. If any overbid from an entity other than CRAC is accepted but fails to be
7 consummated, the Debtor shall be obligated to consummate the transaction with CRAC if
8 CRAC's bid is the next highest bid, at CRAC's option, on or before the date that is five (5)
9 Business Days after the date of such failure to consummate (but no later), on the terms of the
10 Purchase Agreement, except for the purchase price, which shall equal the purchase price of
11 the next highest bid that was submitted to Debtor during the Auction; and

12 s. In the event that Debtor determines in good faith that it has not received a
13 Qualified Bid by the Bid Deadline that is a higher and better bid than the one represented by
14 this Agreement, Debtor shall seek approval of the Purchase Agreement at the Sale Hearing
15 without conducting an Auction and without further motion or adjournment (unless it has
16 received the written consent of CRAC to adjourn the motion).

17 t. The Successful Bidder's Deposit shall be applied by the Debtor against the
18 Total Purchase Price to be paid by such Person at the closing of the transaction; and, in the
19 event any such Person (whether the Buyer or a Qualified Alternative Bidder) does not
20 consummate the transaction by reason of its breach of the terms of the purchase agreement
21 such Person has entered into or agreed to enter into with the Debtor, such Deposit shall be
22 retained by the Debtor (in the case of the Buyer, subject to the Purchase Agreement). Any
23 party that submits a Deposit but otherwise fails to submit a Qualified Alternative Bid or that
24 submits a Deposit and is not the Successful Bidder for the Purchased Assets shall receive a
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1 refund of such Deposit as soon as practicable after closing of the transaction with the
2 Successful Bidder (or any backup Qualified Bidder).

3 u. If the Bankruptcy Court approves the sale of substantially all of the
4 Purchased Assets to a Person(s) other than CRAC (an "Alternative Transaction"), the Debtor
5 shall, upon the closing of the Alternative Transaction, pay CRAC, in cash, a break-up fee of
6 \$1,500,000 (the "Break-Up Fee") plus an expense reimbursement (the "Expense
7 Reimbursement"), which is a reasonable estimate (and not penalty) of the expenses to be
8 incurred by CRAC in performing its due diligence, negotiating the Purchase Agreement, and
9 attempting to have the Bankruptcy Court approve the sale to CRAC. The Expense
10 Reimbursement and Break-Up fees shall be deemed an administrative claim until paid. The
11 Expense Reimbursement and Break-Up Fee shall be paid on the (1st) Business Day after the
12 closing of an Alternative Transaction.

13 v. Upon the withdrawal of this Sale Motion by the Debtor or the termination of
14 the Purchase Agreement by CRAC following the material breach of the Purchase Agreement
15 by the Debtor, the Expense Reimbursement and not the Break-Up Fee will be payable to
16 CRAC, provided that (i) CRAC shall be entitled to seek and be granted specific performance
17 of the Purchase Agreement to enable it to purchase the Purchased Assets on the terms
18 contained in the Purchase Agreement, and (ii) in addition, if for any reason (notwithstanding
19 CRAC's right to compel specific performance) the Debtor sells all or substantially all of its
20 assets to another buyer, then the Break-Up Fee shall be payable to CRAC on consummation
21 of such sale.

22 2. Responses or objections (other than cure objections), if any, to entry of the Sale Order
23 shall be filed with the Bankruptcy Court on or before Friday, October 29, 2010 (the "Sale Objection
24 Deadline"), and served on the following: (i) counsel for Debtor; (ii) counsel for the Official
25 Committee(s) (if any); (iii) counsel for Buyer; (iv) counsel for the Senior Lenders; (v) counsel for
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1 the Junior Lenders; and (vi) the UST. The failure of any objecting Person or other entity to timely
2 file its objection in accordance with the requirements above shall be a bar to the assertion, at the Sale
3 Hearing or thereafter, of any objection to the Motion, the Asset Sale, or Debtor's consummation and
4 performance of the Purchase Agreement (including the transfer of the Purchased Assets and
5 Assumed Executory Contracts and Leases free and clear of all liens, claims, interests, and
6 encumbrances), if authorized by the Court.

7 3. The Debtor requests that the Court approve the above overbid/auction procedures,
8 Break-Up Fee, and the Expense Reimbursement.

9 **B. Assumption and Assignment of Executory Contracts and Leases.**

10 4. The following procedures (the "Executory Contract Procedures") shall govern the
11 assumption and assignment of Executory Contracts and Leases.⁵

12 a. On or prior to the Initial Designation Deadline, CRAC shall use commercially
13 reasonable efforts to designate in writing each Executory Contract that CRAC elects to be
14 assumed and assigned to it (each, a "Initial Assumed Executory Contracts and Lease"),
15 which shall be assumed and assigned to CRAC pursuant to the Sale Order.

16 b. Upon receipt of sufficient funds pursuant to sections 2.3(j) and 3.1(b)(vii) of
17 the Purchase Agreement, Debtor shall pay, satisfy or otherwise discharge the obligations with
18 respect to the Cure Costs related to the Initial Assumed Executory Contracts and Leases by
19 the later of (i) the Closing Date, and (ii) such later date as the Bankruptcy Court may order in
20 connection with any order authorizing Seller to assume or reject the Executory Contracts
21 under Section 365 of the Bankruptcy Code (the "Cure Costs Deadline"), and in each instance
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25 ⁵ The Debtor reserves the right to amend the Executory Contract Procedures in accordance to the
26 terms of any purchase agreement signed by the prevailing bidder at the Auction in the event that
CRAC is not the prevailing bidder at the Auction.

1 CRAC shall have no liability therefore (except as expressly set forth in Section 2.3(j) of the
2 Purchase Agreement); provided, however, that the Cure Costs Deadline shall be extended to
3 a date fifteen (15) days following the entry of a Bankruptcy Court order resolving any
4 disputed Cure Costs.

5
6 c. After the Initial Designation Deadline, and by no later than the Final
7 Designation Deadline, which shall be the thirtieth (30th) day following the Closing Date, (the
8 “Additional Designation Period”), CRAC shall be entitled to designate any remaining
9 unassumed Executory Contract or Lease that CRAC may want to assume from Debtor and
10 have assigned to it (“Additional Designated Executory Contract”) and Debtor shall use its
11 reasonable efforts to seek entry of an Assumption Order with respect any such Additional
12 Designated Executory Contract.

13 d. With respect to each Additional Designated Executory Contract, and upon
14 receipt of sufficient funds pursuant to Section 2.3(j) and Section 3.1(b)(vii) (which funds, to
15 the extent not allocated out of the Purchase Price pursuant to Section 3.1(b), shall be paid by
16 CRAC to Seller substantially simultaneously with the later of (x) the Closing and (y) the date
17 of the assumption and assignment of such Additional Designated Executory Contracts),
18 Debtor shall pay, satisfy or otherwise discharge all obligations with respect to the Cure Costs
19 related to each Additional Designated Executory Contract to the extent that such expenses
20 have accrued prior to the Closing Date. Such payment shall be made on such date as the
21 Bankruptcy Court may order in connection with any order authorizing Seller to assume or
22 reject such Additional Designated Executory Contract under Section 365 of the Bankruptcy
23 Code.

24 e. With respect to each Additional Designated Executory Contract, CRAC shall
25 pay, satisfy or otherwise discharge all expenses of administration allowed by the Bankruptcy
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1 Court in connection with such Additional Designated Executory Contract to the extent such
2 expenses accrued during the period commencing on the first day following the Closing Date
3 and ending on the date on which such Additional Designated Executory Contract is either (i)
4 designated for rejection in writing by CRAC or (ii) designated by CRAC as an Assumed
5 Executory Contract and assumed by and assigned to CRAC pursuant to an Assumption Order
6 (the "Post-Closing Determination Period"); provided, however, that Debtor shall use
7 commercially reasonable efforts to obtain the entry of an Assumption Order in connection
8 with any Additional Designated Executory Contract by no later than thirty (30) days after the
9 Final Designation Deadline. The Debtor will have no liability for any obligations or
10 indebtedness that may accrue under any Additional Designated Executory Contract during
11 the Post-Closing Determination Period, except for any obligations or indebtedness arising by
12 as a result of Debtor's willful misconduct or gross negligence.

13 f. From the Effective Date through and including the Final Designation
14 Deadline, Debtor will not reject or allow for the rejection of any Executory Contract unless
15 otherwise agreed to in writing by CRAC. To the extent that an Executory Contract
16 becomes an Additional Designated Executory Contract, Debtor shall not reject or allow for
17 the rejection of such Executory Contract until CRAC designates in writing that such
18 Executory Contract is to be rejected.

19 g. If, by the Final Designation Deadline, CRAC fails to instruct Debtor in
20 writing to reject an Executory Contract that is not by that date either an Assumed Executory
21 Contract or an Additional Designated Executory Contract, Debtor shall immediately, but in
22 no event more than two (2) Business Days following the Final Designation Deadline, provide
23 written notice of its intention to reject such Executory Contract. CRAC shall have two (2)
24 Business Days from its receipt of such notice to provide Debtor with written notice of its
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1 decision to designate such Executory Contract as an Additional Designated Executory
2 Contract. If CRAC timely designates such Executory Contract as an Additional Designated
3 Executory Contract, CRAC shall have all those obligations and rights set forth in paragraphs
4 4(d) and (e) above with respect to such Executory Contract. If CRAC does not timely so
5 designate such Executory Contract as an Additional Designated Executory Contract, CRAC
6 shall have no obligation or liability on account of such Executory Contract and Debtor shall
7 retain any and all obligations or liabilities in connection therewith; provided that CRAC shall
8 pay, satisfy or otherwise discharge all expenses of administration allowed by the Bankruptcy
9 Court in connection with such Executory Contract for the period commencing on the first day
10 following the Closing Date and ending on the effective date of the rejection of such
11 Executory Contract.
12

13 h. To the extent the Executory Contract Procedures vary from the Purchase
14 Agreement, the Purchase Agreement shall control.
15

16 5. The procedures for notifying non-Debtor parties to the Assumed Executory Contracts
17 and Leases and resolving possible disputes in connection with the assumption and assignment of
18 such Assumed Executory Contracts and Leases, including but not limited to cure amount disputes,
19 shall be as follows:

20 a. Notice of Objection Deadline: Within three (3) Business Days after the date
21 this Bidding Procedures Order is entered, the Debtor shall mail or otherwise serve a copy of
22 such Order, together with a copy of the Notice of Debtor's Intent to Assume and Assign
23 Executory Contracts and Unexpired Leases, substantially in the form attached to the Bidding
24 Procedures Order as Exhibit A, by regular mail to all non-Debtor parties (the "Contract
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1 Parties”) to the Assumed Executory Contracts and Leases, as well as to all Persons or other
2 entities entitled to notice pursuant to the terms of such Assumed Executory Contracts,
3 notifying all such Persons or entities and Contract Parties of the requirement to file an
4 objection on or before the Cure Objection Deadline (as defined below).

5
6 b. After the Auction, the Debtor will provide immediate notice of the identity of
7 the Successful Bidder to the Contract Parties by email, facsimile, or any method reasonably
8 expected to provide notice in a timely manner. For contracts for which CRAC is not the
9 Successful Bidder, the deadline to file an Assumption/Assignment Objection, only, will be
10 the time of hearing.

11 c. Objections. Any Contract Party wishing to assert that any defaults,
12 conditions, or pecuniary losses under any of the Assumed Executory Contracts as of the
13 Petition Date must be cured or satisfied in order for any such Assumed Executory Contract to
14 be assumed and/or assigned, or objecting to the potential assumption and assignment of such
15 Assumed Executory Contract, shall be required to file and serve an objection (a “Cure
16 Objection”), in writing, setting forth with specificity any and all obligations that the Contract
17 Party asserts must be cured or satisfied and/or any and all objections to the potential
18 assumption and assignment of such Assumed Executory Contract.
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20 d. Cure Objection Deadline: To be considered a timely Cure Objection, on or
21 before October 29, 2010 (the “Cure Objection Deadline”), provided however that in the
22 event a Qualified Bidder, other than CRAC is the Successful Bidder at the auction, objections
23 to the ability of the Successful Bidder to provide adequate assurance of future
24 performance may be filed until the time of the Sale Hearing (the “Adequate Assurance
25
26

1 Objection Deadline”). Objections must be filed with the Court and a copy delivered to each
2 of:

3 Dan Goodale
4 Coast Crane Company
5 8250 Fifth Ave., South
6 Seattle, WA 98108
7 Fax: (206)682-6651

8 Michael J. Gearin and
9 Eric Simonson
10 K&L Gates, LLP
11 925 Fourth Avenue, Suite 2900
12 Seattle, Washington 90104
13 Fax: (206) 370-6012

14 Melainie Mansfield
15 Greg Bray
16 David Zolkin
17 Milbank, Tweed, Hadley & McCloy LLP
18 601 South Figueroa Street, 30th Floor
19 Los Angeles, CA 90017
20 Fax: (213) 629-5063

21 Mark D. Northrup
22 Graham & Dunn, PC
23 Pier 70
24 2801 Alaskan Way Ste 300
25 Seattle, WA 98121-1128
26 United States
Fax: (206) 340-9599

27 e. Failure to File Cure Objection: Unless a Cure Objection is timely filed and
28 served by a Contract Party to an Assumed Executory Contract by the Cure Objection
29 Deadline, the Court may enter an order authorizing or effecting the assumption and
30 assignment of such Assumed Executory Contract at the Sale Hearing without regard to any
31 objection such party may have.

1 f. Waiver of Cure Objection: Contract Parties who fail to file and serve Cure
2 Objections as provided above shall be deemed to have waived and released any cure
3 obligations and shall be forever barred and estopped from asserting or claiming against the
4 Debtor, the Buyer or any other Qualified Bidder that any additional amounts are due or
5 defaults exist, or conditions to assignment must be satisfied, under such Assumed Executory
6 Contract.

7
8 g. Cure Objection Hearings: Hearing(s) with respect to Cure Objections, if any,
9 may be held (i) at the Sale Hearing, or at such earlier or later date as the Court may
10 designate, giving effect to the need for certainty and the timing provisions regarding the
11 establishment and satisfaction of applicable cure amounts, as well as the fact that a
12 Successful Bidder other than CRAC may have identified contracts not included in the
13 Assumed Executory Contracts and Leases to include in such party's bid.

14
15 Based on the above, and the concurrently filed memorandum, the Debtor respectfully
16 requests that the Court request the relief requested in these Motions, and enter the Bid
17 Procedures Order and Sale Order as proposed. Proposed forms of the orders are attached to
18 these Motions as Exhibits 1 and 2.

19 DATED this 22nd day of September, 2010.

20 K&L GATES LLP

21
22 By /s/ David C. Neu

23 Michael J. Gearin, WSBA # 20982

24 David C. Neu, WSBA #33143

25 Brian L. Lewis, 33560

26 Attorneys for Coast Crane Company